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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92049013
Party	Plaintiff Contessa Premium Foods, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 2,892,226
For the Mark BAREFOOT CONTESSA
Registered October 12, 2004

Contessa Premium Foods, Inc.,

Petitioner,

v.

Ina Garten LLC, substituted for Garten Food
Corporation,

Registrant.

Cancellation No. 92049013

**AMENDED PETITION FOR
CANCELLATION**

Petitioner Contessa Premium Foods, Inc. ("Contessa"), a corporation with its principal place of business at 222 West Sixth Street, Eighth Floor, San Pedro, California 90731, believes that it is being damaged by United States Trademark Registration No. 2,892,226 and hereby petitions to cancel this registration.

As grounds for cancellation, Contessa alleges:

1. Ina Garten LLC ("Registrant") is the listed owner of United States Trademark Registration No. 2,892,226 ("the '226 Registration") for BAREFOOT CONTESSA. The goods identified in the '226 Registration are "dips, namely, vegetable, yogurt, fish and herb based dips; hummus, chili, stews ribollita, soups, namely, gazpacho and chowders; salads except macaroni, rice and pasta; cranberry sauce; apple sauce, dried fruits, processed nuts, candied nuts, snack mix consisting primarily of processed fruits, processed nuts and/or raisins; processed peas with wasabi flavoring" in International Class 029, and "vegetable strudel, vegetable cobblers, spring rolls, coffee, bread crumbs, croutons, granola, cakes, namely sour cream coffee cake; candy, namely, strawberry flavored laces; quesadilla, salsa" in International Class 030, and "fresh

vegetables and fresh nuts" in International Class 031, and "orange juice, grapefruit juice, lemonade; non-alcoholic cocktail mixes" in International Class 032. The '226 Registration has a filing date of November 22, 2000 and an issuance date of October 12, 2004.

2. Registrant is not entitled to continued registration of the '226 Registration because Registrant committed fraud in the procurement of that registration.

3. Based on the results of research conducted on behalf of Contessa, and based on Contessa's awareness of Registrant's business activities at the time the use-based trademark application was filed, which resulted in the '226 Registration, Registrant was not using the mark for dips, namely, vegetable, yogurt, fish and herb based dips; hummus, chili, stews ribollita, soups, namely, gazpacho and chowders; salads except macaroni, rice and pasta; cranberry sauce; apple sauce, dried fruits, processed nuts, candied nuts, snack mix consisting primarily of processed fruits, processed nuts and/or raisins; or processed peas with wasabi flavoring at the time of filing the use-based trademark application that resulted in the '226 Registration (i.e., November 22, 2000).

4. Based on the results of research conducted on behalf of Contessa, and based on Contessa's awareness of Registrant's business activities at the time the use-based trademark application was filed, which resulted in the '226 Registration, Registrant was not using the mark for vegetable strudel, vegetable cobblers, spring rolls, coffee, bread crumbs, croutons, granola, cakes, namely sour cream coffee cake; candy, namely, strawberry flavored laces; quesadilla, or salsa at the time of filing the use-based trademark application that resulted in the '226 Registration (i.e., November 22, 2000).

5. Based on the results of research conducted on behalf of Contessa, and based on Contessa's awareness of Registrant's business activities at the time the use-based trademark application was filed, which resulted in the '226 Registration, Registrant was not using the mark for fresh vegetables and/or fresh nuts at the time of filing the use-based trademark application

that resulted in the '226 Registration (i.e., November 22, 2000).

6. Based on the results of research conducted on behalf of Contessa, and based on Contessa's awareness of Registrant's business activities at the time the use-based trademark application was filed, which resulted in the '226 Registration, Registrant was not using the mark for orange juice, grapefruit juice, lemonade; or non-alcoholic cocktail mixes at the time of filing the use-based trademark application that resulted in the '226 Registration (i.e., November 22, 2000).

7. Contessa alleges on information and belief that Registrant or its agent made the above-identified material representations of fact in its application and/or during the prosecution of its application, that Registrant knew or should have known were false.

8. Contessa alleges on information and belief that Registrant or its agent made the above-identified false statements with the intent to induce authorized agents of United States Patent and Trademark Office ("USPTO") to grant the '226 Registration, and, reasonably relying upon the truth of said false statements, the USPTO did, in fact, grant this registration to Registrant.

9. Contessa is the owner of the famous CONTESSA trademark. The CONTESSA trademark is strong and distinctive, has been used in connection with food products, has long been the subject of substantial advertising and promotion, has been used and advertised throughout the United States, is widely recognized by consumers and those in the trade, and is in substantially exclusive use by Contessa. Contessa's CONTESSA trademark is recognized by the general consuming public of the United States as a designation of source for the goods of Contessa and is therefore a famous mark. The acts of Registrant alleged herein were commenced at a time after Contessa's CONTESSA mark became famous.

10. Registrant has made use of BAREFOOT CONTESSA as a mark in connection with goods which Registrant has sold and transported in the United States. Registrant's use of

BAREFOOT CONTESSA as a mark creates a likelihood of association with Contessa's famous mark CONTESSA arising from its similarity to Contessa's famous mark. Registrant's acts are in violation of Lanham Act § 43(c) in that they are likely to cause dilution by blurring by impairing the distinctiveness of Contessa's famous mark CONTESSA, all to the irreparable injury to and damage of Contessa.

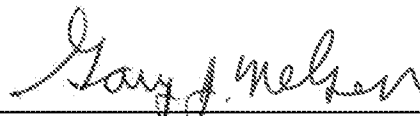
11. The continuous registration of the subject mark of the '226 Registration is causing injury to Contessa's business plans, is impairing Contessa's rights in its own trademarks for CONTESSA, is inconsistent with Contessa's rights, and will continue to cause injury to Contessa until the registration is cancelled.

WHEREFORE, Contessa requests that Registration No. 2,892,226 be canceled and that this petition for cancellation be sustained in favor of Contessa.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP


DATED: September 9, 2008

By 
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CERTIFICATE OF SERVICE

I certify that on September 9, 2008, the foregoing AMENDED PETITION FOR CANCELLATION is being served by mailing a copy thereof by first-class mail addressed to:

Mr. John Margiotta
FROSS ZELNICK LEHRMAN
& ZISSU, P.C.
866 United Nations Plaza
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By: 
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